

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Mediacom Southeast LLC,)	CSR-6848-E
On behalf of its subsidiaries and affiliates)	
)	
Petition For Determination of Effective)	
Competition in:)	
Hopkins (KY0895))	
Hopkins (KY1205))	
Nebo (KY0721))	

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 2007

Released: July 23, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers a petition for special relief that Mediacom Southeast, LLC ("Mediacom") has filed with the Commission pursuant to Sections 76.7, 76.905(b)(2), and 76.907 of the Commission's rules for a determination that Mediacom is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act"),¹ and the Commission's implementing rules,² and are therefore exempt from cable rate regulation in three Kentucky communities ("Franchise Areas"), as listed in Attachments A and B. No oppositions were filed.³

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b) (4).

³ On February 23, 2007, the Commission sent letters to various cable operators, including Mediacom in the above-captioned matter (Mediacom Southeast, LLC, CSR-6848-E), informing them of a deficiency in their petitions for effective competition. The letter noted that the Satellite Broadcasting and Communications Association (SBCA) report submitted listed the number of DBS subscribers in the franchise area but failed to list the corresponding zip codes. The letter explained that the exclusion of the zip codes prevents affected local franchising authorities from ascertaining whether SBCA data accurately reflects the franchise area, and raises questions regarding the accuracy of the number of DBS subscribers in the franchise area. Cable operators were given 30 days to supplement their petition by supplying the missing zip code information. Local franchising authorities were permitted to supplement any existing opposition or file an opposition based on supplemental data within 50 days from the date of the Commission's letter. The above-captioned cable operator, Mediacom, filed the requested information for the above-captioned petitions. No opposition to Mediacom's filing has been received by the Commission.

II. BACKGROUND

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁶ A finding of effective competition exempts a cable operator from rate regulation and certain other Commission cable regulations.⁷

3. Section 623(l) of the Act provides that a cable operator is subject to effective competition if any one of the four tests for effective competition set forth therein is met.⁸ The "competing provider" test, set forth in Section 623(l)(1)(B) of the Communications Act, provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁹ The "low penetration" test for effective competition set forth in Section 623(l)(1)(A) of the Communications Act, provides that a cable operator is subject to effective competition if fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system.¹⁰

III. DISCUSSION

A. Competing Provider Effective Competition

4. Turning to the first prong of the competing provider test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.¹¹ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during this period.¹² In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the Franchise Areas are DBS subscribers, we conclude that the population of these Franchise Areas may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more

⁴ 47 C.F.R. § 76.906.

⁵ See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

⁶ See 47 C.F.R. §§ 76.906 & 907.

⁷ See 47 C.F.R. § 76.905.

⁸ See 47 U.S.C. § 543(l)(1)(A)-(D).

⁹ 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

¹⁰ 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

¹¹ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹² *Twelfth Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73, 21 FCC Rcd 2503 (rel. March 3, 2006).

than one non-broadcast channel.¹³ We further find that Mediacom has demonstrated that the Franchise Areas are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area.¹⁴ Mediacom has submitted to the Commission a Satellite Broadcasting and Communications Association (SBCA) Effective Competition Tracking Report for the purpose of establishing DBS penetration and to confirm that it is the largest MVPD in Nebo. Mediacom admits that it is not the largest MVPD in Hopkins and does not identify the largest MVPD in this area.¹⁵ Mediacom asserts, however, that DBS penetration in Nebo and Hopkins exceeds 15 percent of the households.¹⁶ Mediacom calculates DBS subscribership in these Franchise Areas based on 2000 Census household data and the SBCA Tracking Report which reflects the number of DBS subscribers within the specified zip code+4 extension areas associated with the cable communities.¹⁷

6. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in Nebo. With respect to Hopkins, Mediacom alleges that it has satisfied the second prong of the competing provider test with regard to the Franchise Areas, but it has not met its burden for this portion of the test given our methodology for making this determination and the information submitted.¹⁸ Mediacom has demonstrated that the aggregate DBS subscriber penetration rate in Hopkins exceeds 15 percent, but Mediacom has not demonstrated that its subscriber penetration in Hopkins exceeds 15 percent. In Hopkins, the combined DBS penetration rate is 26.19 percent and Mediacom's penetration rate is 1.48 percent.¹⁹ Mediacom has not established that Hopkins is subject to competing provider effective competition.²⁰ However, as noted below, Mediacom has established that it has met its burden with regard to the low penetration test with respect to Hopkins.

B. Low Penetration Effective Competition

7. Mediacom argues that it is subject to effective competition in Hopkins under the "low penetration" test because Mediacom serves less than 30 percent of the households in these franchise

¹³ See 47 C.F.R. § 76.905(g).

¹⁴ 47 U.S.C. § 76.905(e).

¹⁵ See Petition at 6.

¹⁶ See *id.*

¹⁷ See *id.* at 6-7.

¹⁸ See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (2002). In circumstances where the largest MVPD is unable to be identified, the Commission is able to determine that the second prong is met by making dual assumptions. First, we assume that Mediacom is the largest MVPD provider in the Franchise Areas and determine that the combined DBS subscribership is greater than 15 percent; we then assume that one of the DBS providers is the largest MVPD in the Franchise Areas and determine that Mediacom's subscribership is greater than 15 percent. When both determinations may be made, then the second prong of the competing provider test is met.

¹⁹ See Petition at 7.

²⁰ See, e.g., *Mediacom Illinois LLC, et. al.*, 21 FCC Rcd at 1177-78.

areas.²¹ Mediacom compared the number of subscribers to its cable system serving Hopkins to the U.S. Census household figures for that community.²² This comparison revealed that Mediacom subscribership in Hopkins is 1.48 percent.²³ Based on this evidence, as summarized in Attachment B, Mediacom is subject to effective competition in these communities under the low penetration test.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Petition for Determination of Effective Competition in the Franchise Areas filed by Mediacom Southeast LLC, **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any local franchising authority in the Franchise Areas overseeing Mediacom Southeast LLC, **IS REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.²⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
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Media Bureau

²¹ See Petition at 8.

²² See *id.*

²³ See *id.*

²⁴ 47 C.F.R. § 0.283.

Attachment A

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Cable Operator Subject to Competing Provider Effective Competition

Community	CUID	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Nebo	KY0721	26.19%	84	22

*CPR= Percent DBS penetration.

+ Household Data Figures, available at <http://factfinder.census.gov>.

Attachment B

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Cable Operator Subject to Low Penetration Effective Competition

Community	CUID	Mediacom Penetration	2000 Census Households+	Mediacom Subscribers
Hopkins	KY0895 KY1205	1.48%	18,820	279

+ Household Data Figures, available at <http://factfinder.census.gov>.